

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/19/2001

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss
Deputy

LC 2001-000052

FILED: _____

STATE OF ARIZONA

RORIC MASSEY

v.

MARK BRADLEY WEBB

TODD K COOLIDGE

REMAND DESK CR-CCC
SCOTTSDALE CITY COURT

RULING/AFFIRM/REMAND

SCOTTSDALE CITY COURT

Cit. No. 1440624

Charge: 1. PERSON UNDER 21 YEARS OF AGE OPERATING A
MOTOR VEHICLE WITH ANY SPIRITUOUS LIQUOR IN
BODY
2. LICENSE PLATE LIGHT REQUIRED

DOB: 02-07-1980

DOC: 11-28-1999

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since oral argument on September 10, 2001. This Court has considered the arguments presented, reviewed the record of the proceedings from the Scottsdale City Court, and the memoranda submitted of counsel.

Appellant, Mark Bradley Webb, was charged with being a person under 21 years of age operating a motor vehicle with any spirituous liquor in his body, a class 2 misdemeanor offense, in violation of A.R.S. Section 4-244.34.

The first and second issue raised by Appellant concerns the sufficiency of the evidence to sustain his conviction and whether substantial evidence was presented during the State's case which would justify the trial court's denial of Appellant's Rule 20 motion for judgment of acquittal. When reviewing the sufficiency of the evidence, an appellate court must not reweigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inference will be resolved against the Defendant.² If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.³ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial

¹ *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

² *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ *State v. Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ *In re: Estate of Shumway*, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P.490 (1889).

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evidence exists to support the action of the lower court.⁵ The Arizona Supreme Court has explained in State v. Tison⁶ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

At the trial Scottsdale Police Officer, Hugh Lockerby, testified that he initiated a traffic stop of Appellant's vehicle on Scottsdale Road just approaching the light at Frank Lloyd Wright at approximately three-thirty in the morning.⁸ While speaking with Appellant, Officer Lockerby noticed an odor of an alcoholic beverage coming from Appellant's mouth.⁹ The officer also noticed that Appellant's speech was thick and slurred, and his eyes were bloodshot.¹⁰ Based upon Officer Lockerby's experience, he believed that these symptoms showed that Appellant may have consumed alcohol.¹¹ Officer Lockerby asked Appellant how much he had to drink and Appellant said he did not have anything to drink. When the officer said that he could smell the alcohol on his breath, Appellant then admitted

⁵ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ SUPRA.

⁷ Id. At 553, 633 P.2d at 362.

⁸ Reporter's Transcript of November 20, 2000, at 6.

⁹ Id. at 9.

¹⁰ Id.

¹¹ Id.

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that he'd had a couple of drinks.¹² Appellant specifically admitted drinking a "couple of Budweisers" at a friend's house that evening.¹³ From this evidence, this Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

Finally, Appellant claims that the trial court erred in admitting certified copies of the Appellant's Motor Vehicle Department records. Appellant claims that the records were utilized for a purpose other than for which they were offered. However, the records were admitted pursuant to Rule 902 of the Arizona Rules of Evidence as self-authenticating public records. Additionally, Arizona Rules of Evidence Rule 803 provides that public records may be exceptions to the hearsay rule. It appears to this Court that the exhibit was properly offered and admitted. As such, the exhibits may be considered for any lawful purpose. This Court finds no error.

IT IS THEREFORE ORDERED affirming the judgment of guilt and sentence of the trial court.

IT IS FURTHER ORDERED remanding this case back to the Scottsdale City Court for all future proceedings.

¹² Id. at 11.

¹³ Id.